IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1976

No. 76-655

LONNIE CREEL, JR., et al., etc.,

Petitioners,

vs.

FRANK E. FREEMAN, et al., etc.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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TABLE OF AUTHORITIES

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1976

No. _____

LONNIE CREEL, JR., JACK SULLIVAN, CLINT FOREMAN, TOM W. GAINES, DAN WHITAKER, and JAMES M. ELLISON, individually and for all others similarly situated,

Petitioners,

vs

FRANK E. FREEMAN, E.K. BARNES, CLARENCE HENDRIX, EUGENE MCDANIEL and DORIS ROBERTS, individually, as members of the Walker County Board of Education, and on behalf of all other school boards and school board members similarly situated; ROBERT E. CUNNINGHAM, individually and as Superintendent of Education of Walker County, and on behalf of all other Superintendents similarly situated; PROBATE JUDGE FLORA L. STEWART, SHERIFF HOWARD TURNER, and CIRCUIT CLERK SYLVESTER ANTON in their official capacities as members of the board of supervisors of elections and on behalf of all other boards of supervisors similarly situated,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in the above-styled case.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit is reported at 531 F.2d 286 and is appended hereto at 1a. The denial of the petition for rehearing and suggestion for rehearing en banc is noted at 537 F.2d 1143 and is appended hereto at 10a. The opinions and orders of the United States District Court for the Northern District of Alabama granting summary judgment are unreported and appended hereto at 11a-12a.

JURISDICTION

The opinion of the United States Court of Appeals for the Fifth Circuit was entered on May 10, 1976. A timely petition for rehearing and suggestion for rehearing en banc was denied on August 12, 1976. This Court has jurisdiction to review the judgment below under 28 U.S.C. §1254(1).

QUESTIONS PRESENTED

1. Whether a statute which allows residents of one school district to vote in the elections of another school district dilutes the vote of residents of the second district in violation of the equal protection clause of the Fourteenth Amendment of the Constitution of the United States?

2. Whether the residents of one school district are provided a sufficient interest in the affairs of another school district justifying their right to vote in the second district (when no reciprocal right to vote exists) because the districts share certain facilities, revenues, and draw students from each others' jurisdiction?

3. Whether a claim based on dilution of the franchise because of overinclusiveness of the franchise must fail if there is a finding that the challenged electorate does not have the voting strength by itself to dominate the elections?

4. Whether plaintiff electors claiming dilution of the franchise because of overinclusiveness of the franchise have the burden of demonstrating a compelling state interest in limiting the franchise?

5. Whether domination of elections by electors challenged on the basis of overinclusiveness of the franchise may be justified by a rational relationship test unless there is evidence of invidious discrimination?

6. Whether summary judgment is properly affirmed under facts not found by the district court and which are not undisputed in the record?

CONSTITUTIONAL AND STATUTORY PROVISIONS RELIED UPON

The constitutional provisions and other provisions of law involved in this case are set forth in full in the Appendix, 13a, et seq., as follows:

United States Constitution, Amendment I

United States Constitution, Amendment XIV, §1

United States Code, Title 42, §1983

Ala. Code, Title 52, §63 (1958 Recomp.)

Acts of Alabama, 1965 Regular Session, Act No. 138.

STATEMENT OF THE CASE

This action was filed on January 28, 1974, by the present petitioners, as representatives of a class of plaintiffs who live within the jurisdiction of the Walker County, Alabama, Board of Education. The complaint alleged that the practice of allowing residents of cities with school boards to vote in county school board elections was unconstitutional in that it allowed persons with no substantial interest in the county school board to vote in its elections. The defendants in the suit were the Superintendent of Education, the members of the Board of Education, and the members of the Board of Election Supervisors of Walker County, Alabama. Each defendant was sued as a representative of the class of officials in 36 other counties. Jurisdiction was based on 28 U.S.C. §§ 1331 and 1343, 42 U.S.C. § 1983 and the first and fourteenth amendments of the United States Constitution.

The court eventually disallowed the class action as to the other counties and the case proceeded as a class action concerning only Walker County.[1]

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1. That aspect of the district court's ruling was not appealed nor was its ruling that a three-judge court was not necessary.

After discovery the district court granted the summary judgment in favor of defendants, and the court of appeals affirmed.

The evidence, all documentary in form, may be summarized in pertinent part as follows:

Methods of Election: Alabama law provides for each county one board of education with five members to be "elected by the qualified electors of the county." Ala. Code, Tit. 52, §63, infra, 14a. A local act applying only to Walker County provides that the chairperson shall be elected at large and the four members from individual districts, infra, 15a.

City school boards are permitted by law for each city of over 5,000 inhabitants, Ala. Code, Tit. 52, §148. The cities of Carbon Hill and Jasper, located in Walker County, have independent school boards appointed by the city governing body, Ala. Code, Tit. 52, §152. No person is excluded from voting in the Walker County school board elections because of his or her residence in Jasper or Carbon Hill. Each city school board is essentially equal in its power, authority, and duties to a county school board. When a city school board is created, its territorial jurisdiction is subtracted from the jurisdiction of the county school board. School boards -- both city and county -- are equal and exclusive.

None of the incumbent county school board members lives in Jasper or Carbon Hill.

Financial Structure: The school systems are supported by ad valorem and sales taxes. One ad valorem tax is collected from the whole county for the state's general fund, from which it returns on a basis of need to the school boards in Alabama. A second ad valorem tax collected in the whole county is divided between the three systems on the basis of average daily attendance in accordance with a state formula. A third ad valorem tax is collected in each of the school tax districts and expended only in the district of collection. Additionally, the two cities each have a sales tax paid to their own school boards.

School Locations: The Walker County School System operates one school not within its territorial jurisdiction -- the Walker Area Vocational Center located in Jasper. This institution was constructed with city, county, and federal funds. It is operated by the Walker County Board with its own funds, and an additional $50.00 per student paid by the Jasper School Board for each city resident attending the Center. No other school operated by one school board is located in the jurisdiction of another school board.

Student Attendance: About half of the students attending Carbon Hill schools and the high school in Jasper are residents of the county school board jurisdiction. The number of city residents attending county schools if any there be is not reflected in the record.

REASONS THE WRIT SHOULD BE GRANTED

1. The Decision Below is in Conflict With a Decision of the United States Court of Appeals for the Fourth Circuit.

The decision below cited and distinguished the decision of the United States Court of Appeals for the Fourth Circuit in Locklear v. North Carolina State Board of Elections, 514 F.2d 1152 (4th Cir. 1975). In Locklear, the fourth circuit held that allowing residents of several city school districts to vote in the elections of the county school district diluted the votes of the non-city residents, was over-inclusive, and therefore was a denial of equal protection. The fifth circuit distinguished the Locklear case on the following grounds:

> (a) that the City of Jasper had made a substantial investment in the county school board's vocational school and headquarters;
>
> (b) that the City of Carbon Hill charged no extra fee to the half of its students who were non-residents;
>
> (c) that there is a net outflow of tax money from the cities to the non-city area;
>
> (d) that the plaintiffs here did not prove that the city residents dominated the county school board elections.

Assuming arguendo that these facts are correct (petitioners contest the correctness of the latter two of these), the court below drew distinctions without differences. In both cases, the county school board performed certain regional administrative duties with the agreement of the other boards and with them bearing part of the cost. For instance, in Locklear, the Robeson County School Board administered the jointly-funded transportation system, an Educational Resoure Center and several federally funded projects, 514 F.2d at 1155. The school boards apparently decided that there was an economy of scale in certain functions and had agreed that one school board -- the county district board -- should administer the project. It could just have easily been one of the other boards.

> The city boards are authorized by law to perform these functions and provide these services for themselves. In placing these responsibilities on the county board, the city boards could undoubtedly retain contractual rights of supervision and control over the county board's performance. ... By mutual agreement, the various boards may subsequently decide to place the primary responsibility for the performance of one or more of these joint functions on one or more of the city boards.
> 514 F.2d at 1155-56 (emphasis in original).

To distinguish these facts, the fifth circuit cites an example of the county board providing a service to the city boards and examples of the city boards providing services to the county board or residents of the county district.

First the court below states that the City of Jasper made a substantial investment in the county district's vocational school. The evidence shows that the Jasper School Board contributed $212,500.00 for the construction of the Walker Area Vocational School, but that the Walker County School Board now pays all operating costs. State law did not require the construction contributions nor is the Walker County School Board required to let non-residents attend the vocational school. This compares with Locklear, where there was no state law requiring that the Robeson County Educational Resource Center be established, nor any mandate as to its funding.

Similarly, there is no state law which compels the Jasper School Board to rent a building to the Walker County School Board for $1.00 a year or which compels the Carbon Hill system to admit non-residents without charging fees. Each of these is a unilateral act on the part of the respective city board which can be unilaterally terminated. There may even be a quid pro quo, but the franchise has not been bartered for. Nor would the absence of fiscal exchanges alter the state statute. If anyone was to obtain the right to vote because county district residents attend school in the two cities, it should

be county residents. It is they who have an interest in the governing of the school system which their children attend. No such interest on the part of city residents has been shown. No evidence was presented to show that city residents even attend county district schools.

2. The Decision of the Court Below is Not in Harmony With This Court's Decisions Holding That The Cause of Dilution of the Vote Must be Closely Scrutinized to Determine That it Effectively Promotes a Compelling State Interest.

A. Petitioners should not have the burden of proving a compelling state interest in excluding non-residents from voting.

This Court has repeatedly held that in elections of general interest, restrictions on the franchise other than residence, age and citizenship must promote a compelling state interest in order to survive constitutional attack. Hill v. Stone, 421 U.S. 289 (1975); City of Phoenix, Arizona v. Kolodziejski, 399 U.S. 204 (1970); Evans v. Cornman, 398 U.S. 419 (1970); Kramer v. Union Free School District, 395 U.S. 621 (1969); Cipriano v. City of Houma, 395 U.S. 701 (1969). The petitioners do not contend that the county school board elections are of a special nature such that city school board residents should be excluded, compare, Salyer Land Co. v. Tulare Lake Basin Water Storage District, 410 U.S. 719 (1973); they contend that such

persons are in fact non-residents. As such, their presence within the franchise dilutes the votes of petitioners and members of their class. Reynolds v. Sims, 377 U.S. 533, 562 (1964); Kramer v. Union Free School District, at 626.

Just as variations in the interests of property owners in a general election do not justify disenfranchising those not most directly affected by certain taxes, the collection of taxes does not automatically enfranchise non-residents. See, Salyer Land Co. v. Tulare Lake Basin Water Storage District, at 729, n. 9.

The creation of city school board creates separate and parallel bodies of government, just as certainly as deannexation. The city school boards are not a subpart of the county school board government but a new and independent governmental body. Yet the court of appeals below held that petitioners "have failed to sustain their burden of showing that their proposed 'fencing out' of Jasper and Carbon Hill residents from voting in county board elections is required by a compelling state interest." 6a. Not only did the court of appeals reverse the constitutional burden where petitioners claim the dilution of their vote, but petitioners urge that permitting non-residents to vote based on joint revenue statutes and acts of cooperation, where there is no reciprocal right, is not rationally related to any state interest.

Perhaps the state may broaden its franchise, eschewing all limitations of residence. But it must do so equally, and the franchise extension here runs only from city to county, and not vice versa.

B. In order to prove the dilution of their votes, petitioners are not required to demonstrate that the city residents dominate the elections.

The court below correctly recognized that Locklear v. North Carolina State Board of Elections, 514 F.2d 1152, 1153-54 (4th Cir. 1975), challenged the dilution of votes, not the domination of elections. 8a. Yet the court sought to find that city residents did not control the elections, 4a, and concluded that petitioners could not prevail "where there is no evidence of invidious discrimination which might arise from domination of elections by Jasper and Carbon Hill voters." 9a.[1]

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1. The facts upon which the court of appeals relied were that non-city voters outnumbered city voters. 4a. Petitioners took issue with this in their petition for rehearing, arguing that this cannot be determined from the record since election district lines do not follow school district boundaries and that this was an appeal from the granting of defendants' motions for summary judgment.

The court of appeals in essence treated the case as an election contest. But where dilution

(footnote continued to next page)

In this the court of appeals established a new standard for invidious dilution of the franchise -- it exists only when the elections are impermissibly "dominated." Petitioners contend that where the voting strength challenged constitutes nearly thirty per cent of the votes in a particular election, see 4a, the dilution is indeed invidious. Reynolds v. Sims, 377 U.S. 533, 561 (1964). The court of appeals did not correctly apply this concept, for it failed to recognize that unequal voting strength is not rendered invidious by its degree, but by its lack of justification. Mahan v. Howell, 410 U.S. 315 (1973).

C. Even if revenue support entitles non-residents to the franchise, it is not present in this case.

The court of appeals rested its decision in major part on its view that there existed a net outflow of taxes from the city to the county school system. 9a. While this Court does not sit to assure the correctness of every case, petitioners urge that this initial finding by an appellate court to affirm summary judgment was erroneous and has a bearing on whether review should be granted.

The court of appeals correctly found that 73 per cent of the 4 mill tax collected county wide went to the county school system, 5a. But

(footnote continued from preceding page)

is the issue, the question is not whether elections would have different results, but whether voting power is minimized. Chapman v. Meier, 420 U.S. 1 (1975).

it then assumed that 73 per cent of the revenue collected in the City of Jasper went to the county. This assumes, without basis from the record, that the revenues collected in the two cities exceeded 27 per cent of the revenue collected county wide.[1] It also ignores that fact that sales taxes probably flowed from county residents to the city school systems.

If petitioners' franchise is to be diluted by the inclusion of non-residents, then the basis for this unusual extension of the franchise should be justified by fact. Petitioners should be allowed their day in court to disprove the assumptions of the appellate court.

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1. The only facts in the record were the amount collected county wide, that the county school system received 73 per cent of the total, and the amount collected in the City of Jasper. The latter was 9 per cent of the total, so unless the Carbon Hill (a city with one-fifth the population of Jasper) revenue was double that of Jasper, there was a net flow of money from the county to the cities.

CONCLUSION

For the foregoing reasons, a writ of certiorari should issue to review the judgment of the court of appeals.

Respectfully submitted,

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ATTORNEYS FOR THE
PETITIONERS

LONNIE CREEL, JR., et al.,

Plaintiffs-Appellants,

v.

FRANK E. FREEMAN, et al., Defendants,

WALKER COUNTY BOARD OF EDUCATION, etc., et al.,

Defendants-Appellees.

No. 74-4105.

United States Court of Appeals
Fifth Circuit

May 10, 1976.

Before BROWN, Chief Judge, THORNBERRY, Circuit Judge, and MILLER,* Associate Judge.

MILLER, Associate Judge:

Appellants are residents of Walker County, Alabama, who live outside the city limits of Jasper and Carbon Hill, which are located in

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* Of the United States Court of Customs and Patent Appeals, sitting by designation.

the county. They challenge the constitutionality of Alabama statutes[1] under which residents of Jasper and Carbon Hill, who vote for officials, who, in turn, appoint the members of their respective independent city school boards (Ala.Code, tit. 52, § 152 (recompilation 1958)), also vote for some of

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1. Ala.Code, tit. 52, § 63 (recompilation 1958) provides in part:

> §63. Members.- The county board of education shall be composed of five members, who shall be elected by the qualified electors of the county.

Act No. 138 of the Special Session of the Alabama Legislature of 1965 (Acts of Ala., Vol. I) provides in part as follows:

> Section 1. The general supervision and control of the public schools of Walker County shall be vested in a county board of education, which shall consist of a chairman and four associate members.
>
> Section 2. The chairman of the board shall be a resident and qualified voter of any district or beat in the county. ... He shall be nominated and elected by the qualified voters of the entire county.
>
> Section 3. One member of the board shall be a resident and qualified elector of each of the four districts from which members of the county governing body are elected. ... One member of the board shall be nominated and elected by qualified electors of district one; one member shall be nominated and elected by the qualified electors of district two; one member

(footnote continued to next page)

the five members of the county board of education, which has jurisdiction outside the city limits of Jasper and Carbon Hill, and for the county superintendent of education. It is alleged that this system allows "persons with no substantial interest in the county school board to vote in its elections," thus "diluting" the votes of the noncity residents of Walker County. Appellants seek, among other things, to void and enjoin enforcement of the Alabama statutes insofar as these permit residents of Jasper and Carbon Hill to vote for members of the county board of education and the county superintendent of education, and to enjoin certification of the results of any election in which such city residents have voted for such officials. This appeal is from a summary judgment granted by the district court on motions of appellees, Frank Freeman and other members of the Walker County Board of Education, the members of the Board of Supervisors of Elections of Walker County, and Robert Cunningham, Walker County Superintendent of Education. We affirm.

(footnote continued from preceding page)

> shall be nominated and elected by the qualified electors of district three; and one member shall be nominated and elected by the qualified electors of district four.

Act No. 86 of the Alabama Legislature of 1935 (Local Acts of Ala.) provides for countywide election of the Walker County Superintendent of Education.

FACTS

The City of Jasper is located in district one, and the City of Carbon Hill is located in district two. No Jasper or Carbon Hill residents vote in districts three or four. In the June 1974 primary election (tantamount to final election), a total of 2,357 votes was cast in district two for county board member -- 755 from Carbon Hill and 1,602 from outside Carbon Hill. In the May 1972 countywide primary election for chairman of the county board, a total of 13,500 votes was cast -- 4,161 from Jasper and Carbon Hill and 9,339 from the rest of the county. Appellants do not allege that Carbon Hill or Jasper voters dominate the elections in their respective county school districts, much less the countywide elections. Indeed, none of the incumbent board members lives in Jasper or Carbon Hill.[2]

The building which houses the offices of the Walker County Board of Education and its workshop and textbook center is located within the city limits of Jasper. The Jasper school board paid $100,000 for the purchase of the property and rents it to the county board for $1 a year.

The Walker Area Vocational School, which is also located within the city limits of

2. The incumbent county superintendent of education resides within the city limits of Jasper. In the May 1974 primary election for this office, a total of 15,889 votes was cast -- 4,929 from Jasper and Carbon Hill and 10,960 from outside the two cities.

Jasper, is operated by and under the exclusive control of the county board. However, the Jasper school board contributed $212,500 towards its construction. In 1974 the vocational school had 691 students of which 114 lived inside the city. A charge of $50 is made for each city student in attendance, and the Jasper school board pays it.

Within the city limits of Jasper is Walker High, a senior high school, which in 1974 had an enrollment of 950 students. Of these, 488 lived outside the city limits and 257 were transported to the school by the county board.

In 1974, the Carbon Hill school system had 965 students of which 482 lived outside the city limits. They were transported by buses owned and operated by the county board and were charged no fee.

A 4-mill tax is collected countywide, including property within the city limits of Jasper and Carbon Hill. The total collected in 1973 was $394,524, including $35,501 from property within the city limits of Jasper. Of the total, 73 percent went to the county board under a minimum per pupil school program. This would mean that of the $35,501 paid on property in Jasper, $25,915 went to the county board.

OPINION

The facts of this case clearly show a substantial interest of Jasper and Carbon Hill residents in the operation of the Walker County school system and do not show domination by

such residents over county school board elections. Accordingly, appellants have not met their burden of demonstrating that the Alabama statutes and their application here are irrational or wholly irrelevant to the state's objective of electoral participation in the selection of county school board members. McGowan v. Maryland, 366 U.S. 420, 81 S.Ct. 1101, 6 L.Ed.2d 393 (1961); Clark v. Town of Greenburgh, 436 F.2d 770 (2d Cir. 1971); Glisson v. Mayor & Councilmen of Savannah Beach, 346 F.2d 135 (5th Cir. 1965); Spahos, v. Mayor & Councilmen of Savannah Beach, 207 F.Supp. 688 (S.D.Ga.), aff'd 371 U.S. 206, 83 S.Ct. 304, 9 L.Ed.2d 269 (1962).

Moreover, appellants have failed to sustain their burden of showing that their proposed "fencing out" of Jasper and Carbon Hill residents from voting in county board elections is required by a compelling state interest. Evans v. Cornman, 398 U.S. 410, 90 S.Ct. 1752, 26 L.Ed.2d 370 (1970); Kramer v. Union School District, 395 U.S. 621, 89 S.Ct. 1886, 23 L.Ed. 2d 583 (1969); Little Thunder v. State of South Dakota, 518 F.2d 1253 (8th Cir. 1975). If, as appellants argue, the residents of Jasper and Carbon Hill had "no more interest in the affairs of the county school board than the residents of the next county," a compelling state interest in excluding them from voting would no doubt exist. As the Supreme Court said in Reynolds v. Sims, 377 U.S. 533, 555, 84 S.Ct. 1362, 1378, 12 L.Ed.2d 506, 523 (1964), "the right of suffrage can be denied by ... dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise."

However, the argument simply doesn't square with the facts in this case.

Appellants have called our attention to Locklear v. North Carolina State Board of Elections, 514 F.2d 1152 (4th Cir. 1975), in which it was held that extension of the franchise in county school board elections to residents of city school districts, and the consequent "dilution" of the vote of the non-city residents, was "over-inclusive" and constituted denial of equal protection of the laws. Justification for city residents' participation in the county school board elections was that the county board (1) administered the transportation system for the county as a whole, including the districts under the city school boards; (2) operated an Educational Resource Center for the benefit of all county and city pupils; and (3) administered a number of federally-funded projects. The Fourth Circuit held that the city voters' interest in these functions did not amount to a compelling state interest that city voters participate in the election of certain county school board members. It said:

> We do not doubt that the fact that the county board performs some functions for the benefit of the city boards gives the electorate of the city boards an interest in the operation of the county board, justifying some voice and some control in how the joint functions are performed.

However, it observed that the joint functions performed by the county school board were by agreement with the city school boards and not because of statutory mandate; that contractual rights of supervision and control over the county school board's performance under an agreement enabled the city school boards to participate in the centralized functions to the extent of their interest, rendering electoral participation in the selection of county school board members by residents of the city school districts unnecessary.[3] The court pointed out that while members of the city school boards were elected exclusively by the voters residing within each city board district, seven of the eleven county school board members were elected by voters residing in both the city school board districts and the county board jurisdiction. It was the "dilution" of the county board jurisdiction residents' voting power by residents of the city board districts in the election of the seven members of the county school board which the plaintiffs had attacked.

The factual differences between this case and Locklear are readily apparent. For example, the substantial investment by Jasper residents in the vocational school and in the county board building and the fact that half the Carbon Hill school system's pupils come

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3. The court determined that the extension of the franchise in county school board elections to residents of city school districts was "over-inclusive" for another reason, namely: the county school board administered the schools in its own jurisdiction, and there was "no cooperative effort between the county and city boards in this area."

from outside Carbon Hill and pay no fee have no parallel in Locklear. Nor in Locklear does it appear that there was any net outflow of property tax funds from a city to the county. We are persuaded that to require such matters to be left to agreement between the city school boards and the county school board rather than to a rational and relevant plan established by the Alabama legislature, particularly when there is no evidence of invidious discrimination which might arise from domination of elections by Jasper and Carbon Hill voters, would be to unnecessarily intrude upon an area reserved to the singular capability and responsibility of the legislature.

The judgment is affirmed.

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT
OFFICE OF THE CLERK

August 12, 1976

Edward W. Wadsworth,
Clerk

Tel. 504-589-6514
600 Camp Street
New Orleans, La. 70130

TO ALL COUNSEL OF RECORD

No. 74-4105
Lonnie Creel, Jr., et al
v. Frank E. Freeman, et al;
Walker County Board of Education,
etc., et al

Dear Counsel:

This is to advise that an order has this day been entered denying the petition( ) for rehearing, and no member of the panel nor Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc, Rule 35, Federal Rules of Appellate Procedure; Local Fifth Circuit Rule 12. The petition( ) for rehearing en banc has also been denied.

See Rule 41, Federal Rules of Appellate Procedure for issuance and stay of mandate.

Very truly yours,

EDWARD W. WADSWORTH, CLERK

BY: s/ Susan M. Gravois
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ALABAMA
JASPER DIVISION

LONNIE CREEL, et al.,	)	
	)	
Plaintiffs,	)	Civil Action
	)	No. 74-G-78-J
vs.	)	
	)	[Filed: November
FRANK E. FREEMAN, et al.,	)	15, 1974]
	)	
Defendants.	)	

ORDER

This cause came on to be heard on the motions of defendant, Walker County Board of Education, and defendant, members of the Board of Supervisors of Elections of Walker County, Alabama, for summary judgment. The court has considered these motions and is of the opinion that they are due to be granted. The court bases this determination on authority which includes the following cases: Clark v. Town of Greenburgh, 436 F.2d 770 (2d Cir. 1971); Glisson v. Savannah Beach, 346 F.2d 135 (5th Cir. 1965). The court places special reliance on Rutledge v. State of Louisiana, 330 F.Supp. 336 (W.D. La. 1971).

Accordingly, it is ORDERED, ADJUDGED and DECREED that the above motions for summary judgment be, and the same hereby are, granted.

DONE this 15th day of November, 1974.

s/J. Foy Guin, Jr.
UNITED STATES DISTRICT JUDGE
J. FOY GUIN, JR.

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ALABAMA
JASPER DIVISION

LONNIE CREEL ET AL.,	)	[Filed: November 26, 1974]
PLAINTIFFS	)	
VS.	)	CIVIL ACTION NO. 74-G-78-J
FRANK E. FREEMAN ET AL.,	)	
DEFENDANTS	)	

ORDER

This cause came on to be heard on the motions of Defendant, Robert E. Cunningham, who was sued in said cause as a representative of the residents of those cities having an independent school board, for Summary Judgment. The Court has considered this Motion and is of the opinion that it is due to be granted. The Court bases this determination on authority which includes the following cases: Clark v. Town of Greenburgh, 436 F.2d 770 (2nd Cir. 1971); Glisson v. Savannah Beach, 346 F.2d 135 (5th Cir. 1965). The Court places special reliance on Rutledge vs. State of Louisiana, 330 F. Supp. 335 (W.D. La. 1971).

Accordingly, it is ORDERED, ADJUDGED AND DECREED that the above Motion for Summary Judgment, be, and the same is hereby granted.

DONE this 26th day of November, 1974.

s/ J. Foy Guin, Jr.
UNITED STATES DISTRICT JUDGE
J. FOY GUIN, JR.

United States Constitution, Amendment I

> Congress shall make no law***abriding the freedom of speech***; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

United States Constitution, Amendment XIV, §1

> ***No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; ***nor deny to any person within its jurisdiction the equal protection of the laws.

United States Code, Title 42, §1983

> Every person who, under color or any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected,, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

Code of Alabama (Recomp. 1958), Title 52, § 63. Members. -- The county board of education shall be composed of five members, who shall be elected by the qualified electors of the county. They shall be persons of good moral character, with at least a fair elementary education, of good standing in their respective communities, and known for their honesty, business ability, public spirit and interest in the good of public education. No member of the county board of education shall be an employee of said board. (1927 School Code, § 87.)

Act No. 138 of the Special Session of the Alabama Legislature of 1965 (Acts of Ala., Vol.I)

AN ACT

To provide further for the control, supervision and administration of public schools in Walker County; to fix the qualifications and to provide for the election of a chairman and associate members of the county board of education; to fix their terms of office; to provide for their compensation, and the manner of filling vacancies in office.

Be It Enacted by the Legislature of Alabama:

Section 1. The general supervision and control of the public schools of Walker County shall be vested in a county board of education, which shall consist of a chairman and four associate members.

Section 2. The chairman of the board shall be a resident and qualified voter of any district or beat in the county, a person of good moral character, of good standing in his community, known for his honesty, business ability, public spirit and interest in the good of public education. He shall be nominated and elected by the qualified voters of the entire county; he shall take office on the day following his election and qualification and shall serve for a term of six years and until his successor is elected and qualified.

Section 3. One member of the board shall be a resident and qualified elector of each of the four districts from which members of the

county governing body are elected. Each shall be a person of good moral character, of good standing in his community, known for his honesty, business ability, public spirit and interest in the good of public education. One member of the board shall be nominated and elected by qualified electors of district one; one member shall be nominated and elected by the qualified electors of district two; one member shall be nominated and elected by the qualified electors of district three; and one member shall be nominated and elected by the qualified electors of district four.

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Section 6. All laws or parts of laws which conflict with this Act are repealed.

Section 7. The provisions of this Act are severable. If any part of the Act is declared invalid or unconstitutional, such declaration shall not affect the part which remains.